

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the motion to proceed to S.J. Res. 3 which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to S.J. Res. 3 proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 10 minutes.

Mr. SPECTER. I thank my distinguished colleague from Arizona for yielding me a few moments this morning.

ELIAN GONZALEZ

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the case involving young Elian Gonzalez. At 11 o'clock this morning, Senator LOTT has scheduled a closed-door proceeding with Attorney General Reno, and there are a number of important outstanding questions which, in my view, should be addressed.

At the outset, let me make it plain that I believe and have believed that young 6-year-old Elian Gonzalez should have been reunited with his father at the earliest possible time. I believe that as a legal matter there is no real justification for any asylum proceeding to keep young Elian Gonzalez in the United States. The purpose of asylum is to protect an alien from going back to a country where he or she will be persecuted. That certainly is not the case with Elian Gonzalez. He would be adulated.

Nonetheless, I believe there are some very serious issues which have arisen that the Congress ought to address, and the most prominent of those is the manner in which Elian Gonzalez was taken into custody. In my opinion, there were less intrusive ways in which that could have been accomplished. The Immigration and Naturalization Service said that they proceeded at 5 a.m. because they did not want to have any interference from the crowd. The avoidance of interference from the crowd could have been accomplished at high noon if the crowd were to have been moved back several blocks, which is customary where people have a right to demonstrate, people have a right to express themselves, but they do not have the right to do it right at the location where there may be other interests which have to be preserved. Had the crowd been several blocks away, there would have been no difficulty in taking whatever action was deemed appropriate without the risk of having a problem with the crowd.

Once the Immigration and Naturalization Service agents were directed

to move in to take custody of young Elian, they had been armed to protect themselves. But the action necessitating their being armed had very great potential for violence. It was a potential powder keg. Fortunately, there were no serious injuries. But there could have been. And it is my view that there ought to be a look by the Congress at ways to improve these procedures in the future.

The Supreme Court of the United States, in the case of *Garner v. Tennessee*, issued a ruling involving a Tennessee statute which involved law enforcement officers using deadly force against a fleeing felon even if that felon was unarmed. The Supreme Court of the United States held that this statute was unconstitutional because deadly force may not be used unless it is to save lives or avoid grievous bodily injury. Now, the problem with what was done by the INS in moving in with drawn weapons at 5 a.m. was that it could have triggered a chain reaction which could have led to violence. And there was really no necessity. They were not dealing with the customary INS case where they have a suspected terrorist or a violent criminal. This is not a John Dillinger who has to be taken into custody. That matter could have waited another day.

When I read the morning papers last Friday that the Department of Justice was considering moving in to take young Elian Gonzalez, I wrote to both the Attorney General and the President and expressed the view that there were a number of less intrusive alternatives which could have been undertaken. And I pressed hard at that time for them to have a court order.

When the President said the Federal court ordered Elian Gonzalez taken into custody, that is not correct. The Court of Appeals for the 11th Circuit specifically refused to decide and declined to issue an order requested by the Department of Justice to have the uncle turn over Elian to INS so he could be turned over to the father. The district court did not deal with the custody issue either, but only decided that if there were to be an application for asylum, the proper person to make that was the father and not the uncle.

On this state of the record, there is a very serious legal issue as to what authority the INS had to take Elian into custody. They certainly were not going to take him into custody to deport him because there was an order of the circuit court prohibiting that until the circuit court had decided the case.

There is, in my opinion, a need for Congress to take a look at another issue. The Department of Justice, regrettably, does not have a good record at Ruby Ridge or at Waco. I chaired the subcommittee hearings on Ruby Ridge which led to a change in the FBI rules on use of deadly force and currently am chairing a special task force of a subcommittee looking into Waco. In the context of what happened at Ruby Ridge and Waco and what hap-

pened with the potential powder keg in Miami last Saturday morning, it is my view the Congress ought to consider institutionalizing some permanent unit within the Department of Justice.

The raid, which was conducted at 5 a.m., has the potential—and it is hard to determine—of leaving very deep scars on young Elian Gonzalez. When it occurred, the question came into my mind as to why the father was not at the scene, if not present at the house, but close to the scene to assist in soothing young Elian. I think the entire matter could have been avoided had the crowd been cleared, had there been a court order, had the Government taken up the representation of the uncle's lawyer that Elian would be peacefully turned over.

In the interim, it is my hope that the proceedings in Federal court will be expedited. I ask unanimous consent that the letters I wrote to Attorney General Reno and President Clinton be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. Mr. President, those letters set forth in some greater detail the way those hearings can be expedited. When the Million Man March occurred in 1998 in New York City, the Federal court ruled on August 26, and the court of appeals took it up on September 1 and issued a 9-page opinion the same day. In the Pentagon papers case, only 18 days elapsed from the publication of the papers until the case went through the district court, the court of appeals, and the Supreme Court of the United States. I renew my suggestion to the Department of Justice to expedite those proceedings.

Ultimately, Elian will be returned with his father to wherever they choose to go. I hope they will stay in the United States, but that is a matter for the Gonzalezes to determine. Juan Miguel Gonzalez is the father, having parental responsibility for the child, but these are issues as to the use of this extraordinary force and what should be institutionalized in the Department of Justice, which I think the Congress should look into in oversight hearings, not to attach any blame but to improve procedures and approaches for the future.

Again I thank my distinguished colleague from Arizona and yield the floor.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, April 21, 2000.

Hon. JANET RENO,
Attorney General, U.S. Department of Justice,
Washington, DC.

DEAR ATTORNEY GENERAL RENO: I am deeply concerned about reports in today's media that you may initiate action through Federal law enforcement agencies to take Elian Gonzales from the residence of his relatives in Miami and return him to his father. My concern arises from the experience at Ruby Ridge, a subject on which I chaired Judiciary